

ORIGINAL



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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

GARY PIERCE – Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

RECEIVED

2012 JUL 11 A 10:14

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICES.

DOCKET NO. WS-20794A-11-0140

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR  
APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

MOTION TO DISMISS  
LACK OF JURISDICTION

COMES NOW Intervenor Emerald Springs Homeowners' Association, by and through counsel undersigned, pursuant to *Arizona Administrative Code* R14-3-106(K) and R14-3-109(C) and Rule 12(b)(1), *Arizona Rules of Civil Procedure*, and hereby moves this Commission to dismiss Docket numbers WS-20794A-11-0140 and WS-20794A-11-0279 for the reasons that the applicant is not a "public service corporation," and therefore, this Commission lacks jurisdiction to rule upon the applicant's Application for Certificate of Convenience and Necessity and for Approval of a Rate Increase. This Motion is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2012.

CHURCHILL & LaBENZ

Arizona Corporation Commission

DOCKETED

JUL 11 2012

DOCKETED BY [Signature]

By:

[Signature of Julie A. LaBenz]

Julie A. LaBenz  
Churchill & LaBenz  
1300 Joshua Ave., Ste. B  
Parker, AZ 85344  
(928) 669-6195  
(928) 669-5376 (fax)  
[jlabenz@johnchurchill.com](mailto:jlabenz@johnchurchill.com)  
Attorney for Emerald Springs HOA



1 classifications, rates and charges, rules, contracts, and accounts; local regulation” states in part,  
2 “[t]he corporation commission shall have full power to, and shall, prescribe just and reasonable  
3 classifications to be used and just and reasonable rates and charges to be made and collected,  
4 *by public service corporations within the State* for service rendered therein, and make  
5 reasonable rules, regulations, and orders, by which such corporations shall be governed in the  
6 transaction of business within the State . . .” (Emphasis added).

7 **3. A.R.S. § 40-203. Power of commission to determine and prescribe rates,  
8 rules and practices of public service corporations.**

9 A.R.S. § 40-203 states in part, “When the commission finds that the rates, . . . charges  
10 or classifications, or any of them, demanded or collected by *any public service corporation* for  
11 any service . . . the commission shall determine and prescribe them by order, as provided in this  
12 title.” (Emphasis added).

13 **4. Southwest Transmission Cooperative, Inc. v. Arizona Corporation  
14 Commission, 213 Ariz. 427, 142 P.3d 1240 (App. 2006)**

15 In Southwest Transmission Cooperative, Inc. v. Arizona Corporation Commission, 213  
16 Ariz. 427, 142 P.3d 1240 (App. 2006), the Arizona Court of Appeals explained the legal  
17 framework to determine if an entity qualifies as a “public service corporation.” The court  
18 wrote (213 Ariz. at 430):

19 Determining whether an entity is a public service corporation requires a  
20 two-stop analysis. First, we consider whether the entity satisfies the  
21 literal and textual definition of a public service corporation under Article  
22 15, Section 2, of the Arizona Constitution. *Id.* at 285-86, 818 P.2d at  
720-21. Second, we evaluate whether the entity’s business and activity  
are such “as to make its rates, charges, and methods of operations a  
matter of public concern,” by considering the eight factors articulated in  
*Natural Gas Serv. Co. v. Serv-Yu Coop.*, 70 Ariz. at 237-38, 219 P.2d at  
325-26.

23 **LAW & ARGUMENT:**

24 **1. DII-Emerald Springs, LLC is not a “public service corporation” pursuant to  
25 Article 15, § 2, Constitution of Arizona.**

26 At this time, upon information and belief, DII has no customers and the pocket  
27 wastewater treatment plant DII purports to own is not in operation. Furthermore, it appears that  
28 DII abandoned said pocket plant as the plant has been ignored and has not been serviced since the

1 HOA disconnected from the plant on or about March 6, 2012. Additionally, upon information  
2 and belief, DII currently derives no income from the pocket plant and has no customers. It also  
3 appears that DII no longer owns the pocket wastewater treatment plant as it was used as collateral  
4 for a judgment for which the creditor obtained a default judgment. Exhibit 1: copy of default  
5 judgment. Moreover, Intervenor Waltco/Charles Dunn Financial Group/Robana foreclosed upon  
6 the land underlying the pocket plant under a deed of trust which was secured by the land as well  
7 as all improvements and fixtures upon the land. Exhibit 2: copy of deed of trust and trustee's  
8 deed. Finally, DII does not have any agreement in place to operate said pocket plant upon the  
9 land underlying the pocket plant as DII lost ownership of that land through foreclosure and has  
10 not secured any lease or other such agreement.

11 Yet, in order to be a "public service corporation" pursuant to Article 15, § 2 of the  
12 Arizona Constitution, a corporation must "engage in" sewer services for profit. DII, however, is  
13 not engaged in providing sewer services for profit. Arizona Public Service Co. v. Arizona Corp.  
14 Com'n, 155 Ariz. 263, 267 746 P.2d 4, 8 (1987) (concluding that "AZP Group, Inc." is not a  
15 "public service corporation" because it "does not *furnish* electricity or any other service to the  
16 public, nor does it have the intent or authority to offer utility service to the public in any  
17 fashion.") (Emphasis added). Additionally, even if DII intends to offer utility services to the  
18 public, it seeks to provide services in the very small town of Ehrenberg, Arizona for which DII  
19 currently has no customers nor any prospective customers, and further, it appears that DII no  
20 longer has an ownership interest in said wastewater treatment plant, and that the plant has not  
21 been serviced by DII since on or about March 6, 2012.

22 **2. DII's business and activities are not a matter of public concern.**

23 **a. Serv-Yu Factors**

24 **1) What the corporation actually does.**

25 At this time DII is not engaged in providing sewer services to the public. Instead, there is  
26 a pocket wastewater treatment plant sitting on land owned by Charles Dunn Financial Group  
27 within the Emerald Springs housing community and the ownership of that pocket plant is in  
28 question. Based upon these facts, DII is not engaged in providing any service to the public.

1                                   **2) A dedication to public use.**

2           As DII is not engaged in providing a public service, it has not shown a dedication to  
3 public use.

4                                   **3) Articles of incorporation, authorization, and purposes.**

5           According to the Arizoan Corporation Commission website, DII is not indicate the type  
6 of business it engages in. Exhibit 3: copy of ACC page for DII-Emerald Springs, LLC.

7                                   **4) Dealing with the service of a commodity in which the public  
8 has been generally held to have an interest.**

9           Although the public has an interest in sewer services, DII is not actively engaged in  
10 providing sewer services as DII currently has no customers and may no longer own the pocket  
11 plant.

12                                   **5) Monopolizing or intending to monopolize the territory with a  
13 public service commodity.**

14           Although it appears that DII seeks to monopolize the territory, currently there are no  
15 known customers in the area seeking to use DII's sewer services.

16                                   **6) Acceptance of substantially all requests for service.**

17           It appears that DII has not received any requests for service, or, lacks the ability to  
18 provide sewer services as the pocket plant is not in operation.

19                                   **7) Service under contracts and reserving the right to  
20 discriminate.**

21           It appears that DII has not entered into any service contracts as the pocket plant is not in  
22 operation.

23                                   **8) Actual or potential competition with other corporations whose  
24 business is clothed with public interest.**

25           Actual or potential competition may exist between Copper State Game Club, R.V. and  
26 Mobile Home Park and DII.

27           **3. The Arizona Corporation Commission lacks jurisdiction to regulate DII-  
28 Emerald Springs, LLC for purposes of issuing a CC&N and/or rate increase  
because DII is not a "public service corporation."**

          DII is not engaged in providing sewer services, and therefore, does not fit within the  
definition of the public service corporation. Arizona Public Service Co. v. Arizona Corp. Com'n,

1 155 Ariz. 263, 267 746 P.2d 4, 8 (1987) (finding that “[t]he Commission itself may not give  
2 ‘public service’ designation to businesses not specifically listed in art. 15, § 2, nor may the  
3 legislature expand the Commission’s jurisdiction by giving ‘public service’ designation to  
4 businesses falling outside the scope of the constitutional definition”) (citing Rural/Metro  
5 Corporation v. Arizona Corporation Commission, 129 Ariz. 116, 118, 629 P.2d 83, 85 (1981);  
6 Menderson v. City of Phoenix, 51 Ariz. 280, 285, 76 P.2d 321, 323 (1938)). As a result, the  
7 Arizona Corporation Commission is without jurisdiction to consider or approve DII’s  
8 applications for a CC&N and a rate increase. DII’s applications, therefore, should be dismissed.

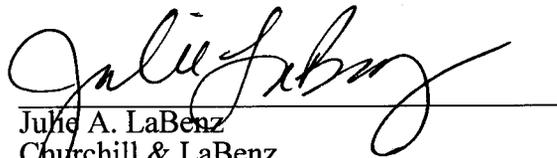
9 **CONCLUSION:**

10 Based upon the foregoing, Intervenor Emerald Springs HOA respectfully moves this  
11 Commission to dismiss docket numbers WS-20794A-11-0140 and WS-20794A-11-0279.

12 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2012.

13 **CHURCHILL & LaBENZ**

14  
15  
16 By:



17 Julie A. LaBenz  
18 Churchill & LaBenz  
19 1900 Joshua Ave., Ste. B  
20 Parker, AZ 85344  
21 (928) 669-6195  
22 (928) 669-5376 (fax)  
23 [jlabenz@johnchurchill.com](mailto:jlabenz@johnchurchill.com)  
24 Attorney for Emerald Springs HOA  
25  
26  
27  
28

1 Copies of the foregoing mailed/delivered  
this 10<sup>th</sup> day of July, 2012, to:

2 Docket Control  
3 Arizona Corporation Commission  
4 1200 West Washington  
Phoenix, Arizona 85007

5 Copy of the foregoing mailed  
this 10<sup>th</sup> day of July, 2012, to:

6 Henry Melendez  
7 DII-Emerald Springs, L.L.C.  
212 East Rowland Street, No. 423  
8 Covina, CA 97723  
diigroup@aol.com

9 Steve Wene  
10 MOYES SELLERS & HENDRICKS  
1850 N. Central Ave., Ste. 1100  
11 Phoenix, AZ 85004  
Attorney for Robhana, Inc. and Charles Dunn Capital, Inc.

12 Doyle Thompson  
13 COPPER STATE GAME CLUB, R.V. AND MOBILE HOME PARK  
P.O. Box 287  
14 Ehrenberg, AZ 85334

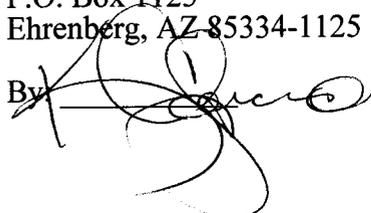
15 Janice Alward, Chief Counsel  
Legal Division  
16 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
17 Phoenix, AZ 85007

18 Steven M. Olea, Director  
Utilities Division  
19 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
20 Phoenix, AZ 85007

21 Arizona Reporting Service, Inc.  
2200 North Central Ave., Suite 502  
22 Phoenix, AZ 85004-1481

23 Courtesy Copy provided by mail  
this 10<sup>th</sup> day of July, 2012, to:

24 Dennis Price  
25 P.O. Box 1125  
Ehrenberg, AZ 85334-1125

26 By   
27  
28

# Exhibit 1

**JUDGMENT INFORMATION STATEMENT  
Pursuant to A.R.S. Section 33-967**

**Name and last known address of debtor(s):**

Dynamic Financial & Investment Services, Inc.  
800 S. Barranca Avenue, #260  
Covina, CA 91723

Henry Melendez  
800 S. Barranca Avenue, #260  
Covina, CA 91723

**Address debtor(s) received the Summons:**

Same

**Name and address of Judgment Creditor(s):**

Pacific Western Bank  
c/o Amy D. Reyes, Esq.  
Quarles & Brady LLP  
One Renaissance Square  
Two North Central Avenue  
Phoenix, AZ 85004-2391

**Amount of Judgment:**

1. Damages: \$246,310.49;
2. Prejudgment Interest: \$25,809.871;
3. Attorney's Fees: \$4,611.20;
4. Costs: \$605.00;
5. The Collateral described on "Attachment A" of the judgment.

**Debtor(s) social security number, date of birth and driver's license number:**

N/A

**Has a stay of enforcement been ordered by the Court? \_\_\_\_\_ YES \_\_\_X\_\_\_ NO**

**If YES, the date the stay expires: \_\_\_\_\_**

Certified Copy MAR 09 2011

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MICHAEL K. JEANES, Clerk

By [Signature] Deputy

005051

RECEIVED 25 ROOM 111		JUD-100 FOR COURT USE ONLY F.O. <b>FILED</b> LOS ANGELES SUPERIOR COURT JUL 23 2010 JOHN A. CLARKE, CLERK [Signature] CV2011 005051
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, bar number, and address): Larry G. Ivanjack, Bar No. 66291 Gary Tokumori, Bar No. 149952 Parker, Milliken, Clark, O'Hara & Samuelian 555 South Flower Street, 30th Floor Los Angeles, CA 90071 TELEPHONE NO.: (213) 683-6500 FAX NO. (Optional): (213) 683-6669 E-MAIL ADDRESS (Optional):		
ATTORNEY FOR PLAINTIFF: PACIFIC WESTERN BANK SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 NORTH HILL STREET MAILING ADDRESS: CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL - UNLIMITED		
PLAINTIFF: PACIFIC WESTERN BANK DEFENDANT: DYNAMIC FINANCIAL & INVESTMENT SERVICES		
<b>JUDGMENT</b> <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: BC421488

- JUDGMENT**
1.  **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d.  Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e.  Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - (1)  plaintiff's testimony and other evidence.
    - (2)  plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2.  **ON STIPULATION**
- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b.  the signed written stipulation was filed in the case.
  - c.  the stipulation was stated in open court     the stipulation was stated on the record.
3.  **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on (date and time):  
before (name of judicial officer):
  - b. Appearances by:
 

<input type="checkbox"/> Plaintiff (name each): (1) (2)	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each): (1) (2)	<input type="checkbox"/> Defendant's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
  - c.  Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d.  A statement of decision (Code Civ. Proc., § 832)  was not  was requested.

PLAINTIFF: PACIFIC WESTERN BANK CASE NUMBER: \_\_\_\_\_  
 DEFENDANT: DYNAMIC FINANCIAL & INVESTMENT SERVICES, I

JUDGMENT IS ENTERED AS FOLLOWS BY:  THE COURT  THE CLERK

4.  Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

- a.  for plaintiff (name each): PACIFIC WESTERN BANK, a California state-chartered bank, formerly known as PACIFIC WESTERN NATIONAL BANK and against defendant (names): DYNAMIC FINANCIAL & INVESTMENT SERVICES, INC., a California corporation; HENRY MELENDEZ, an individual  
 Continued on Attachment 5a.
- b.  for defendant (name each):
- c.  for cross-complainant (name each):  
 and against cross-defendant (name each):  
 Continued on Attachment 5c.
- d.  for cross-defendant (name each):

6. Amount.

- a.  Defendant named in Item 5a above must pay plaintiff on the complaint:
- c.  Cross-defendant named in Item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$ 246,310.49
(2) <input checked="" type="checkbox"/> Prejudgment interest at the 6% & 9.5% annual rate of / %	\$ 25,809.87
(3) <input checked="" type="checkbox"/> Attorney fees	\$ 4,611.20
(4) <input checked="" type="checkbox"/> Costs	\$ 605.00
(5) <input type="checkbox"/> Other (specify):	\$ 0.00
<b>(6) TOTAL</b>	<b>\$277,336.56</b>

(1) <input type="checkbox"/> Damages	\$ 0.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$ 0.00
(3) <input type="checkbox"/> Attorney fees	\$ 0.00
(4) <input type="checkbox"/> Costs	\$ 0.00
(5) <input type="checkbox"/> Other (specify):	\$ 0.00
<b>(6) TOTAL</b>	<b>\$ 0.00</b>

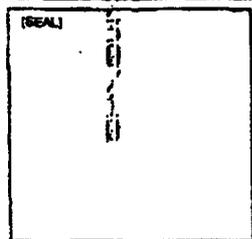
- b.  Plaintiff to receive nothing from defendant named in Item 5b.  
 Defendant named in Item 5b to recover costs \$ 0.00 and attorney fees \$ 0.00
- d.  Cross-complainant to receive nothing from cross-defendant named in Item 5d.  
 Cross-defendant named in Item 5d to recover costs \$ 0.00 and attorney fees \$ 0.00

7.  Other (specify): POSSESSION OF COLLATERAL DESCRIBED ON ATTACHMENT "A"; PROVIDED, HOWEVER, THAT AT SUCH TIME AS PLAINTIFF TAKES POSSESSION OF THE COLLATERAL, IT SHALL SELL SAME IN A COMMERCIALY REASONABLE HAMNER AND PROVIDE DEFENDANTS WITH CREDIT FOR THE NET PROCEEDS OF THE SALE BY FILING A PARTIAL OR FULL SATISFACTION OF JUDGMENT AS APPROPRIATE.

Date: 7-23-10

  
 MARY ANN MURPHY, CLERK

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

MC-025

SHORT TITLE: PACIFIC WESTERN BANK v. DYNAMIC FINANCIAL  
& INVESTMENT SERVICES, INC. et al.

CASE NUMBER:

**ATTACHMENT (Number: "A")**

*(This Attachment may be used with any Judicial Council form.)*

- 1996 Mack 600 Dump Truck (VIN 1M1AA14Y0TW064581);
- 1996 Mack 600 Dump Truck (VIN 1M1AA14Y2TW064582);
- 1996 Mack 600 Dump Truck (VIN 1M1AA14Y3TW064588);
- 1996 Mack 600 Dump Truck (VIN 1M1AA14Y1TW064587);
- 1995 KW DS Water Truck (VIN 1XKDA68X8SS682074);
- 1996 Ford TN Water Truck (VIN 1FDYY95W2TVA04115);
- Wastewater Treatment System (ID Number FP-20-ESC-517-A);
- 1993 Oshkosh Water Truck FA-2546 (VIN 10T2DOEF4P1047834);

In addition, the word "Collateral" also includes all of the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- A) All accessions, attachments, accessories, tools, parts, supplies replacements of and additions to any of the collateral described herein, whether added now or later.
- B) All products and produce of any of the property described in this Collateral section.
- C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

*(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)*

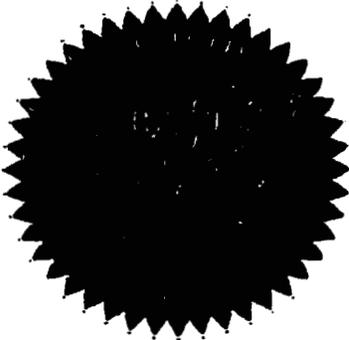
Page \_\_\_\_ of \_\_\_\_

*(Add pages as required)*

**EXEMPLIFICATION**

<b>Petitioner: PACIFIC WESTERN BANK</b> <b>Respondents: DYNAMIC FINANCIAL &amp; INVESTMENT SERVICES</b>	<b>CASE NUMBER:</b> <b>BC 421488</b>
--	---

**STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**



I, JOHN A. CLARKE, Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles do hereby certify and attest that I am the custodian of records of the said Court, and that the foregoing is a full, true and correct copy of the original JUDGMENT BY DEFAULT BY COURT FILED JULY 23, 2010.//////  
////////////////////////////////////  
////////////////////////////////////  
////////////////////////////////////

on file or of record in my office, and that I have carefully compared the same with the original.

Executed and Seal of Said Court Affixed at Los Angeles, California on FEBRUARY 23, 2011

*John A. Clarke*  
\_\_\_\_\_  
EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

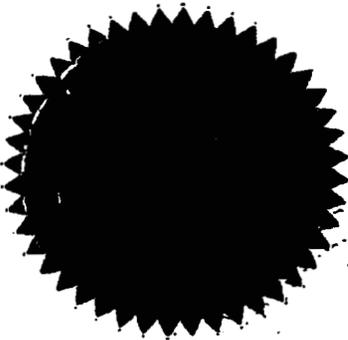
**STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

I, CHARLES W. McCOY Jr., Presiding Judge of the Superior Court of the State of California for the County of Los Angeles do hereby certify that JOHN A. CLARKE is Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles (which is a court of record having by law a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said JOHN A. CLARKE as such officer, that the seal annexed thereto is the seal of said Superior Court, that said JOHN A. CLARKE as such officer is the legal custodian of the original records or documents described and referred to in the foregoing certificate; is the proper officer having the authority to execute and said certificate and attestation, and such attestation is in due and proper form according to the laws of the State of California.

Executed at Los Angeles, California on FEBRUARY 23, 2011

*Charles W. McCoy Jr.*  
\_\_\_\_\_  
PRESIDING JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

**STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**



I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, State of California, the same being a public entity having by law a seal, do hereby certify that CHARLES W. McCOY Jr., whose name is subscribed to the foregoing certificate of due and proper attestation was, at the time of signing same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the path of office, or a true and correct copy thereof, of the judge above named is on file or of record in my office, that I am well acquainted with his handwriting, and verily believe the signature of the said judge to the said certificate to be genuine.

Executed and Seal of Said Registrar-Recorder/County Clerk Affixed at Los Angeles, California on FEBRUARY 23, 2011

*Dean C. Logan*  
\_\_\_\_\_  
REGISTRAR-RECORDER/COUNTY CLERK OF THE COUNTY OF LOS ANGELES

**EXEMPLIFICATION**

# Exhibit 2

Recorded at the request of:

State Title Agency, Inc.

AFTER RECORDING, RETURN TO:

CHARLES DUNN CAPITAL, INC.  
ED TEFT, PRESIDENT  
800 WEST SIXTH STREET, 6TH FL  
LOS ANGELES, CA 90017-2709



2006-03148  
Page 1 of 7  
Requested By: STATE TITLE  
SHELLY D BAKER, RECORDER  
OFFICIAL RECORDS OF LA PAZ COUNTY, AZ  
04-28-2006 04:15 PM Recording Fee \$16.00

Escrow No.: 06104901-SH

## DEED OF TRUST AND ASSIGNMENT OF RENTS

Date: April 27, 2006

**TRUSTOR:**

DII EMERALD SPRINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

whose mailing address is 1050 LAKES DRIVE, #150, WEST COVINA, CA 91790

**TRUSTEE:**

State Title Agency, Inc., an Arizona corporation

whose mailing address is: 2404 Stockton Hill Rd., Kingman, AZ 86401

**BENEFICIARY:**

WALTCO OF NEVADA PROFIT SHARING PLAN, A NEVADA CORPORATION, AS TO AN UNDIVIDED 50% INTEREST AND ROBHANA, INC., A CALIFORNIA CORPORATION

whose mailing address is: 800 WEST SIXTH STREET, 6TH FL, LOS ANGELES, CA 90017-2709

Property situate in the County of LA PAZ, State of ARIZONA, as described as follows:

See Exhibit A attached hereto and made a part hereof.

Together with all buildings, improvements and fixtures thereon or hereinafter erected thereon.

Street address if any, or identifiable location of this property:

EMERALD SPRINGS SUBDIVISION, EHRENBURG, AZ 85334

THIS DEED OF TRUST, made on the above date by, between and among the TRUSTOR, TRUSTEE and BENEFICIARY above named.

WITNESSETH: That Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the above described real property (the Trust Property), together with leases, issues, profits, or income therefrom (all of which are hereinafter called "property income"): SUBJECT, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

**FOR THE PURPOSE OF SECURING:**

- A. Payment of the indebtedness in the principal sum of \$3,000,000.00 evidenced by a Promissory Note or Notes of even date herewith, and any extension or renewal thereof, executed by Trustor in favor of Beneficiary or order.
- B. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a Promissory Note or Notes reciting that they are secured by a Deed of Trust.
- C. Performance of each agreement of Trustor herein contained.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

1. To keep said property in good condition and repair; not to remove or demolish any building, thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violations of law; and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

Initials: HM \_\_\_\_\_

2. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

4. To pay, at least 10 days before delinquent, all taxes and assessments affecting said property; when due, all encumbrances, charges, and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Deed of Trust or at the legal rate if it secures a contract or contracts other than a promissory note or notes. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on said premises or immediately due and payable at option of Beneficiary or Trustee.

**IT IS MUTUALLY AGREED:**

6. That any award of damages in connection with any condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust), and upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

Initials:

11. That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, Payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

In the alternative to foreclosure by trustees sale, the Beneficiary may foreclose by judicial proceedings, and in such event, the election to declare the unpaid balance immediately due and payable may be made in the complaint. In such judicial proceedings, Beneficiary shall be entitled to reasonable Attorney's fees, costs of foreclosure report, and all sums advanced with interest as provided paragraphs four (4) and five (5) herein.

12. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

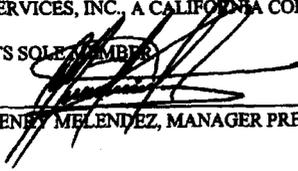
The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address hereinbefore set forth.

Trustor  
DII EMERALD SPRINGS LLC, AN ARIZONA  
LIMITED LIABILITY COMPANY

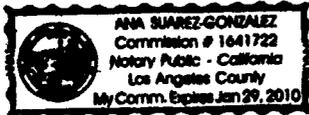
Trustor

BY: DYNAMIC FINANCIAL & INVESTMENT  
SERVICES, INC., A CALIFORNIA CORPORATION

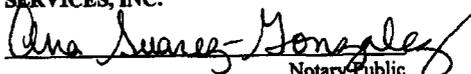
ITS SOLE MEMBER

  
HENRY MELENDEZ, MANAGER PRESIDENT

STATE OF CALIFORNIA }  
County of Los Angeles } ss



This instrument was acknowledged before me  
this 27<sup>th</sup> day of April, 2006  
by DII EMERALD SPRINGS, LLC BY  
HENRY MELENDEZ AS PRESIDENT OF  
DYNAMIC FINANCIAL & INVESTMENT  
SERVICES, INC.

  
Notary Public  
My commission will expire Jan 29, 2010

STATE OF }  
County of } ss

This instrument was acknowledged before me  
this \_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission will expire \_\_\_\_\_

**Exhibit A**

**PARCEL NO. 1:**

A portion of Sections 3 and 10, Township 3 North, Range 22 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona, more particularly described as follows:

**BEGINNING** at the Northeast corner of LOT FOUR (4) of Section 3, Township 3 North, Range 22 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona;

Thence North 89 degrees 52 minutes 45 seconds West along the North line of Lot 4 in said Section 3, a distance of 735.77 feet to the Northwest corner of said Lot 4;

Thence North 87 degrees 44 minutes 45 seconds West, a distance of approximately 1747.91 feet to a point on the East line of Section 25, Township 6 South, Range 23 East, San Bernardino Base and Meridian, the **TRUE POINT OF BEGINNING**;

Thence North 87 degrees 44 minutes 45 seconds West, a distance of approximately 2663.56 feet to the left descending bank of the Colorado River;

Thence Southerly along the West descending bank of the Colorado River to a point which is described as the intersection of the Westerly extension of the North line of Lot 2 in Section 11, Township 3 North, Range 22 West, Gila and Salt River Base and Meridian, and the left descending bank of the Colorado River;

Thence North 89 degrees 58 minutes 04 seconds East along the Westerly extension of the North line of said Lot 2, a distance of approximately 2690.11 feet to a point on the East line of said Section 25, Township 6 South, Range 23 East, San Bernardino Base and Meridian;

Thence North 00 degrees 47 minutes 33 seconds West along said East line of said Section 25, a distance of 2709.48 feet to the **TRUE POINT OF BEGINNING**;

**EXCEPT** that portion more specifically described as follows:

A parcel of land lying within the accretion area Westerly of the 1917 left bank meander line of Section 10, Township 3 North, Range 22 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

**COMMENCING** at the Northeast corner of Section 10;

Thence North 89 degrees 57 minutes 40 seconds West along the Westerly extension of the North line of said section, a distance of 2471.38 feet to a point, said point being located on the East line of Section 25, Township 6 South, Range 23 East, San Bernardino Base and Meridian, California, and being the **TRUE POINT OF BEGINNING**;

(Continued)

(Parcel No. 1 Continued)

Thence South 00 degrees 47 minutes 33 seconds East, a distance of 1320.10 feet to the Southeast corner of said parcel;

Thence South 89 degrees 58 minutes 04 seconds West, a distance of 1272.74 feet to a witness corner on the 1931 left bank of the abandoned Colorado River as referenced by the Palo Verde Book 1165 Survey dated February 3, 1932, Palo Verde Irrigation District;

Thence continuing South 89 degrees 58 minutes 04 seconds West, a distance of 16.72 feet to the true Southwest corner of said parcel;

Thence North 03 degrees 27 minutes 04 seconds West, a distance of 1323.38 feet to the Northwest corner of said parcel;

Thence South 89 degrees 59 minutes 17 seconds East, a distance of 1350.87 feet to the TRUE POINT OF BEGINNING, being the Northeast corner of said parcel.

EXCEPTING therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water.

EXCEPT that portion lying within EMERALD SPRINGS, according to the plat of record in the office of the County Recorder of La Paz County, Arizona, recorded June 20, 1997, at Fee No. 97-4026.

**PARCEL NO. 2:**

A portion of Section 10, Township 3 North, Range 22 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 10, being a found 3.5 inch GLO Brass Cap;

Thence South 00 degrees 00 minutes 00 seconds West, along the East line of said Section 10, said line being the basis of bearing for this description, a distance of 1319.18 feet to the POINT OF BEGINNING;

(Continued)

(Parcel No. 2 Continued)

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 569.20 feet;

Thence South 89 degrees 56 minutes 06 seconds West, a distance of 125.00 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 200.00 feet along the Westerly line of Lot 65 of the unrecorded plat of "Sour Dough Tract";

Thence South 89 degrees 56 minutes 06 seconds West, a distance of 1350.00 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 500.00 feet;

Thence South 89 degrees 56 minutes 06 seconds West, a distance of 2647.25 feet along a line 50 feet North of and parallel with the Westerly extension of the South line of Government Lot 2 in Section 11, to a point on a meander line approximately 80 feet +/- from the high water line of the Colorado River;

Thence along said meander line North 47 degrees 44 minutes 53 seconds West, a distance of 346.39 feet to a point 84 feet +/- from the high water line;

Thence North 44 degrees 32 minutes 45 seconds West, a distance of 737.95 feet to a point 64 feet +/- from the high water line;

Thence North 20 degrees 36 minutes 04 seconds West, a distance of 548.18 feet to a point 84 feet +/- from the high water line and the end of said meander line;

Thence North 89 degrees 58 minutes 41 seconds East, a distance of 5089.19 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water.

**PARCEL NO. 3:**

LOTS ONE (1), TWENTY-NINE (29), THIRTY (30), THIRTY-ONE (31), THIRTY-TWO (32), FORTY (40),  
AND FORTY-ONE (41), EMERALD SPRINGS, according to the plat of record in the office of the County  
Recorder of Mohave County, Arizona, recorded June 20, 1997, at Fee No. 97-4026.

EXCEPTING therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the  
natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water.

## New York Appellate Division Reports

### Timpson v. Mayor, 5 App. Div. 424 (1896)

The defendant's counsel do not distinctly dispute that title by adverse possession may, as a general proposition, be acquired against the city of New York. That it may is hardly open to doubt. Section 365 of the Code provides that "An action to recover real property or the possession thereof cannot be maintained by a *party other than the people*," unless there has been seizin within twenty years. The city is certainly a "party other than the people." There being no doubt as to the general doctrine, no satisfactory reason has been assigned why land under water in the Hudson river should form an exception to the general rule. That title to land under water in a navigable river, as well as exclusive rights of fishery therein, may be acquired by adverse possession or prescription against the State, is settled law in this jurisdiction. (*Rogers v. Jones*, 1 Wend. 237; *Trustees of Brookhaven v. Strong*, 60 N.Y. 56.) What may not be acquired is the right to interfere with the public easement of navigation. It was said by SELDEN, J., in *People v. Vanderbilt* (26 N.Y. 287, 292, 293), "The right of property in the soil or bed of a navigable river or arm of the sea, and the right to use the waters for the purposes of navigation, are entirely separate and distinct. The first of these rights is by the common law vested *prima facie* in the sovereign power; that is, in England, in the king, here in the people; but may be alienated by the king or people so as to become vested in an individual or corporation.

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<b>Corporate Inquiry</b>	
<b>File Number: L-1081981-7</b>	<b>Check Corporate Status</b>
<b>Corp. Name: DII-EMERALD SPRINGS, L.L.C.</b>	

**Domestic Address**

% MARGARET L STEINER
LORONA STEINER DUCAR LTD
3003 N CENTRAL AVE #1500
PHOENIX, AZ 85012-2909

**Statutory Agent Information**

<b>Agent Name: MARGARET L STEINER</b>
<b>Agent Mailing/Physical Address:</b>
LORONA STEINER DUCAR LTD
3003 N CENTRAL AVE #1500
PHOENIX, AZ 85012-2909
<b>Agent Status: APPOINTED 03/10/2010</b>
<b>Agent Last Updated: 03/17/2010</b>

**Additional Corporate Information**

<b>Corporation Type: DOMESTIC L.L.C.</b>	<b>Business Type:</b>
<b>Incorporation Date: 06/13/2003</b>	<b>Corporate Life Period: PERPETUAL</b>
<b>Domicile: ARIZONA</b>	<b>County: MARICOPA</b>
<b>Approval Date: 06/13/2003</b>	<b>Original Publish Date: 07/07/2003</b>

**Manager/Member Information**

BLUE TOWER HOLDINGS INC MEMBER	
-----------------------------------	--

212 E ROWLAND ST #423 COVINA, CA 91723 <b>Date of Taking Office:</b> 03/10/2010 <b>Last Updated:</b> 03/17/2010	
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(Click on gray button to view document - will open in a new window)

Document Number	Description	Date Received
03063270	AMENDMENT	03/10/2010

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**Amendments**

Amendment Date	Amendment Type	Publish Date	Publish Exception
03/10/2010	AMENDMENT		WAIVE

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**Microfilm**

Location	Date Received	Description
11595020027	06/13/2003	ARTICLES OF ORGANIZATION
20321056046	07/07/2003	PUBLICATION OF ARTICLES OF ORGANIZATION

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- [A.C.C. Corporations Division Main Page](#)
- [Arizona Corporation Commission Home Page](#)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE – Chairman  
4 BOB STUMP  
5 SANDRA D. KENNEDY  
6 PAUL NEWMAN  
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION ) DOCKET NO. WS-20794A-11-0140  
9 OF DII-EMERALD SPRINGS, L.L.C. FOR A )  
10 CERTIFICATE OF CONVENIENCE AND )  
11 NECESSITY TO PROVIDE WASTEWATER )  
12 SERVICES. )

13 IN THE MATTER OF THE APPLICATION ) DOCKET NO. WS-20794A-11-0279  
14 OF DII-EMERALD SPRINGS, L.L.C. FOR )  
15 APPROVAL OF RATES. )

**ORDER**

16 BASED UPON Intervenor Emerald Springs Homeowners’ Associations’ Motion to  
17 Dismiss, the Commission hereby makes the following findings of fact:

- 18 1. That DII-Emerald Springs, LLC is not engaged in providing sewer services;
- 19 2. That DII-Emerald Springs, LLC is not a “public service corporation” pursuant to  
20 Article 15, § 2, Constitution of Arizona;
- 21 3. That the Arizona Corporation Commission is without jurisdiction to approve DII-  
22 Emerald Springs’ Applications for a Certificate of Convenience and Necessity and  
23 for a rate increase;

24 IT IS HEREBY ORDERED

25 Dismissing WS-20794A-11-0140 and WS-20794A-11-0279.

26 DATED \_\_\_\_\_

27 \_\_\_\_\_  
28 Administrative Law Judge

1 Copy of the foregoing mailed/delivered  
this \_\_\_ day of \_\_\_\_\_, 2012, to:

2  
3 Henry Melendez  
4 DII-Emerald Springs, L.L.C.  
5 212 East Rowland Street, No. 423  
6 Covina, CA 97723  
7 diigroup@aol.com

8  
9 Julie A. LaBenz  
10 Churchill & LaBenz  
11 1300 Joshua Ave., Ste. B  
12 Parker, AZ 85344  
13 attorney for Emerald Springs HOA

14  
15 Steve Wene  
16 MOYES SELLERS & HENDRICKS  
17 1850 N. Central Ave., Ste. 1100  
18 Phoenix, AZ 85004  
19 Attorney for Robhana, Inc. and Charles Dunn Capital, Inc.

20  
21 Doyle Thompson  
22 COPPER STATE GAME CLUB, R.V. AND MOBILE HOME PARK  
23 P.O. Box 287  
24 Ehrenberg, AZ 85334

25  
26 Janice Alward, Chief Counsel  
27 Legal Division  
28 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Steven M. Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

20 Courtesy Copy provided by mail  
this \_\_\_ day of \_\_\_\_\_, 2012, to:

21  
22 Dennis Price  
23 P.O. Box 1125  
24 Ehrenberg, AZ 85334-1125

25  
26  
27  
28  
By: \_\_\_\_\_